## REMARKS

The present Amendment amends claims 1, 33, 34, 36, and 37, cancels claim 35, and adds claim 38. Therefore, the present application has pending claims 1-34 and 36-38.

35 U.S.C. §112 Rejections

Claim 35 stands rejected under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter that Applicants regard as the invention. As indicated above, claim 35 was canceled. Therefore, this rejection is rejection is rendered moot regarding claim 35.

In paragraph 4 of the Office Action, the Examiner describes deficiencies of claim 5. However, claim 5 does not contain the subject matter described by the Examiner. Therefore, it appears that "Claim 5" in paragraph 4 is a typographical error, which the Examiner intended to read as "Claim 35."

35 U.S.C. §102 Rejections

Claims 34 and 35 stand rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 5,825,883 to Archibald, et al. ("Archibald"). As indicated above, claim 35 was canceled. Therefore, this rejection is rendered moot regarding claim 35. With regard to the remaining claim 34, this rejection is traversed for the following reasons. Applicants submit that the features of the present invention, as now more clearly recited in claim 34, are not taught or suggested by Archibald, whether taken individually or in combination with any of the other

references of record. Therefore, Applicants respectfully request the Examiner to reconsider and withdraw this rejection.

Amendments were made to the claims to more clearly describe features of the present invention. Specifically, amendments were made to the claims to more clearly describe that the present invention is directed to a method of calculating a licensing fee of digital contents as recited, for example, in independent claim 34.

The present invention, as recited in claim 34, provides a method of calculating a licensing fee of a digital contents. The method includes counting the number of pages displaying digital contents, and calculating a fee in accordance with the number of displayed pages. The method also includes calculating a total amount of audiovisual times for each of the digital contents, and calculating a copyright fee in accordance with the calculated total amount of audiovisual times. The prior art does not disclose all these features.

The above described features of the present invention, as now more clearly recited in the claims, are not taught or suggested by any of the references of record, particularly Archibald, whether taken individually or in combination with each other.

Archibald discloses a method and apparatus that accounts for the usage of digital applications. However, there is no teaching or suggestion in Archibald of the method of calculating a licensing fee of digital contents, as recited in independent claim 34.

Archibald's method and apparatus keeps track of the use of digital applications on an as used basis. In this way, a publisher may be compensated for

each use of its digital application rather than by a lump sum purchase price. Archibald's method and apparatus maintains a user payment database 100 (Fig. 3). The user payment database 100 includes a plurality of words for users 106 and 108. Within each user record is a plurality of publisher records 110 and 112, and within each publisher record 110 and 112 is an application identification field 114, a price field 116, a use unit field 118, an amount used field 120, and an amount owed field 122. As illustrated in Fig. 3, user #1 (item 152) acquired two programs (programs 1 and 2) from publisher #1 (item 110). Publisher #1 has established that, for this user, program 1 costs 10 cents per unit of use, where the unit of use is 5 minutes. The user used the program for 60 minutes, which results in 12 units of use. Therefore, the amount owed to the publisher is $1.20. (See generally, column 7, lines 32-67).

Features of the present invention include counting the number of pages displaying digital contents and calculating a fee in accordance with the number of displayed pages. Archibald does not disclose these features. To support the assertion that Archibald discloses these features, the Examiner cites columns 3 to column 4, column 8, lines 38-56, and claims 1-4. Archibald discloses calculating a fee according to a usage based on time or time increments. Alternatively, "usage or consumption may be based on any one or a combination of several different use criterion, such as time, time increments, functionality, resource, number of accesses or invocations, [and] amount of database access" (column 8, lines 38-56). Contrary to the Examiner's assertions, none of these bases of use disclosed in Archibald include the number of displayed pages, as claimed. In the response to arguments

(page 8 of the Office Action), the Examiner suggests that the criterion of functionality, resource, number of access or invocations, and amount of database access "clearly covers the number of pages displaying contents", and " could all be considered equivalents to measurements of pages displaying digital contents." Applicants disagree. Neither the use of functionality, resource, number of accesses or invocations, nor amount of database access, as disclosed in Archibald, is the same as counting the number of pages displaying digital contents or calculating a fee in accordance with the number of displayed pages, as claimed.

Other features of the present invention, as recited in claim 34, include calculating a total amount of audiovisual times for each of the digital contents and calculating a copyright fee in accordance with the calculated total amount of audiovisual times. Archibald does not disclose these features. As previously discussed, Archibald discloses calculating a fee according to a usage based on time or time increments. Alternatively, "usage or consumption may be based on any one or a combination of several different use criterion, such as time, time increments, functionality, resource, number of accesses or invocations, [and] amount of database access" (column 8, lines 38-56). None these bases for calculating a fee in Archibald is the same as calculating a copyright fee based on the calculated total amount of audiovisual times for each of the digital contents, as in the present invention.

Therefore, Archibald fails to teach or suggest "counting the number of pages displaying digital contents" and "calculating a fee in accordance with the number of displayed pages" as recited in claim 34.

Furthermore, Archibald fails to teach to teach or suggest "calculating a total amount of audiovisual times for each of the digital contents" and "calculating a copyright fee in accordance with the calculated total amount of audiovisual times" as recited in claim 34.

Therefore, Archibald fails to teach or suggest the features of the present invention, as now more clearly recited in the claims. Accordingly, reconsideration and withdrawal of the 35 U.S.C. §102(b) rejection of claim 34 is respectfully requested.

The remaining references of record have been studied. Applicants submit that they do not supply any of the deficiencies noted above with respect to the references used in the rejection of claim 34.

35 U.S.C. §103 Rejections

Claims 1-33, 36 and 37 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Archibald in view of U.S. Patent No. 6,813,608 to Baranowski, et al. ("Baranowski"). This rejection is traversed for the following reasons. Applicants submit that the features of the present invention, as now more clearly recited in claims 1-33, 36 and 37, are not taught or suggested by Archibald or Baransowski, whether taken individually or combination with each other as suggested by the Examiner. Therefore, Applicants respectfully request the Examiner to reconsider and withdraw this rejection.

**Independent claims 1, 33, 36, and 37**

Amendments were made to the claims to more clearly describe the features of the present invention. Specifically, the claims were amended to more clearly describe that the present invention is directed to a method of calculating a licensing fee of digital contents, a system for calculating a licensing fee of digital contents, and a computer readable storage medium storing a program for calculating a licensing fee of digital contents as recited, for example, in independent claims 1, 33, 36, and 37.

The present invention, as recited in claim 1, and as similarly recited in claims 33, 36 and 37, provides a method for calculating a licensing fee of digital contents. The method includes a step of distributing digital contents from a center side distribution apparatus to a terminal apparatus via a shop side distribution apparatus. The method also includes allowing digital contents capable of being accessed at a limited place to be viewed and listened to during a limited time period, where the limited time period includes time elapsed between entering and exiting the limited place, and collecting an audiovisual fee according to the length of the limited time period. Another step includes calculating a total amount of audiovisual times for each of the digital contents viewed and listened to at the terminal apparatus by totaling audiovisual records of the digital contents of respective users for a plurality of users and for each of the digital contents. The method also includes calculating a copyright fee in accordance with the calculated total amount of audiovisual times for

each of the digital contents viewed and listened to. The prior art does not disclose all these features.

The above described features of the present invention, as now more clearly recited in the claims, are not taught or suggested by any of the references of record. Specifically, the features are not taught or suggested by either Archibald or Baranowski, whether taken individually or in combination with each other.

As previously discussed, Archibald discloses a method and apparatus that accounts for the usage of digital applications. However, there is no teaching or suggestion in Archibald of the method of calculating a licensing fee of digital contents, as recited in independent claim 34.

Features of the present invention, as recited in claim 1, and as similarly recited in claims 33, 36 and 37, include allowing digital contents capable of being accessed at a limited place to be viewed and listened to during a limited time period, where the limited time period includes time elapsed between entering and exiting the limited place, and collecting an audiovisual fee according to the length of the limited time period. Archibald does not disclose all these features. To support the assertion that Archibald discloses allowing digital contents capable of being accessed at a limited place to be viewed and listened to, the Examiner cites columns 3 and 4, column 8, lines 38-56, and claims 1-4, and suggests that a personal computer or a mobile personal computer unit of Archibald corresponds to the "limited place" of the present invention. However, the Examiner concedes that Archibald does not teach or suggest accessing the digital contents during a limited time period, and collecting

an audiovisual fee according to the length of the limited time period. In addition to failing to teach these features, Applicants further assert that Archibald does not teach or suggest where the limited time period includes time elapsed between entering and exiting the limited place. Therefore, Archibald does not disclose all the features of the present invention.

Other features of the present invention, as recited in claim 1, and as similarly recited in claims 33, 36 and 37, include calculating a total amount of audiovisual times for each of the digital contents viewed and listened to at the terminal apparatus by totaling audiovisual records of the digital contents of respective users for a plurality of users and for each of the digital contents. The method also includes calculating a copyright fee in accordance with the calculated total amount of audiovisual times for each of the digital contents viewed and listened to. Archibald does not disclose these features. As previously discussed, Archibald discloses calculating a fee according to a usage based on time or time increments. Alternatively, "usage or consumption may be based on any one or a combination of several different use criterion, such as time, time increments, functionality, resource, number of accesses or invocations, [and] amount of database access" (column 8, lines 38-56). None these bases for calculating a fee in Archibald is the same as calculating a copyright fee based on the calculated total amount of audiovisual times for each of the digital contents, as in the present invention.

Therefore, Archibald fails to teach or suggest "a step of allowing digital contents capable of being accessed at a limited place to be viewed and listened to

during a limited time period, wherein the limited time period includes time elapsed between entering and exiting the limited place" and "a step of collecting an audiovisual fee according to the length of said limited time period" as recited in claim 1, and as similarly recited in claims 33, 36 and 37.

Furthermore, Archibald fails to teach or suggest "a step of calculating a total amount of audiovisual times for each of the digital contents viewed and listened to at the terminal apparatus by totaling audiovisual records of the digital contents of respective users for a plurality of users and for each of the digital contents" and "a step of calculating a copyright fee in accordance with the calculated total amount of audiovisual times for each of the digital contents viewed and listened to" as recited in claim 1, and as similarly recited in claims 33, 36 and 37.

The above noted deficiencies of Archibald are not supplied by any of the other references of record, particularly Baranowski. Therefore, combining the teachings of Baranowski with Archibald still fails to teach or suggest the features of the present invention as now more clearly recited in the claims.

Baranowski discloses a system and method for enhancing user experience in a wide-area facility having a distributed, bounded environment. However, there is no teaching or suggestion in Baranowski of the a method of calculating a licensing fee of digital contents, a system for calculating a licensing fee of digital contents, and a computer readable storage medium storing a program for calculating a licensing fee of digital contents as recited in independent claims 1, 33, 36, and 37.

Baranowski teaches a wireless system, including a system controller, and a portable device with wireless connection to the wireless system. The wireless system can be used to link customers to the operations of a business. This link can be used to increase customer efficiency in the use of the business, including scheduling appointments to avoid lines, viewing customer locations on an interactive map, and tracking the location of other customers traveling in a group. This link can also allow the customer to initiate searches for information or products and to make electronic purchases. The business can use the link to send information or advertisements directly to select customers.

Features of the present invention, as recited in claim 1, and as similarly recited in claims 33, 36 and 37, include allowing digital contents capable of being accessed at a limited place to be viewed and listened to during a limited time period, where the limited time period includes time elapsed between entering and exiting the limited place, and collecting an audiovisual fee according to the length of the limited time period. The Examiner relies upon Baranowski for disclosing the steps of accessing the digital contents during a limited time period, and collecting an audiovisual fee according to the length of the limited time period. To support the assertion that Baranowski discloses these features, the Examiner cites column 13, lines 28-33. As described in the cited text, Baranowski merely discloses where customers receive a portable device as part of an admission package (e.g., to a cruise ship, resort, airport, etc.), and may borrow or rent the device from the facility, or may purchase it. However, there is no teaching or suggestion in Baranowski of

accessing the digital contents during a limited time period, where the limited time period includes time elapsed between entering and exiting the limited place, and then collecting an audiovisual fee according to the length of the limited time period. More specifically, there is no disclosure in Baranowski of where the rental fee includes fees collected according to the length time elapsed between entering and exiting a limited place, as in the present invention.

Other features of the present invention, as recited in claim 1, and as similarly recited in claims 33, 36 and 37, include calculating a total amount of audiovisual times for each of the digital contents viewed and listened to at the terminal apparatus by totaling audiovisual records of the digital contents of respective users for a plurality of users and for each of the digital contents. The method also includes calculating a copyright fee in accordance with the calculated total amount of audiovisual times for each of the digital contents viewed and listened to. Baranowski does not disclose these features, and the Examiner does not rely upon Baranowski for teaching these features.

Therefore, Baranowski fails to teach or suggest "a step of allowing digital contents capable of being accessed at a limited place to be viewed and listened to during a limited time period, wherein the limited time period includes time elapsed between entering and exiting the limited place" and "a step of collecting an audiovisual fee according to the length of said limited time period" as recited in claim 1, and as similarly recited in claims 33, 36 and 37.

Furthermore, Baranowski fails to teach or suggest "a step of calculating a total amount of audiovisual times for each of the digital contents viewed and listened to at the terminal apparatus by totaling audiovisual records of the digital contents of respective users for a plurality of users and for each of the digital contents" and "a step of calculating a copyright fee in accordance with the calculated total amount of audiovisual times for each of the digital contents viewed and listened to" as recited in claim 1, and as similarly recited in claims 33, 36 and 37.

**Dependent Claims 2-32**

Applicants submit that Claims 2-32 are dependent on claim 1, and therefore, are patentable for at least the same reasons discussed previously regarding independent claim 1.

***Claims 9-16 and the Examiner's Official Notice***

Further regarding claims 9-16, the present invention as recited in those claims provides a step of prolonging an audiovisual time of digital contents if an electronic advertisement is viewed and listened to at the terminal apparatus. The Examiner concedes that Archibald does not disclose this feature. However, the Examiner gives Official Notice that "compensating users for viewing advertisements was well known to one of ordinary skill at the time the invention was made; and it would have been obvious to compensate the user with incentives related to receiving digital content" (see paragraph 16 of the Office Action). As previously discussed in the Amendment filed on January 20, 2006, Applicants traverse this finding, and submit that a step of prolonging an audiovisual time of digital contents if an electronic

advertisement is viewed and listened to at the terminal apparatus, in a method as claimed, is not well known in the art.

If Official Notice is taken of a fact, and is unsupported by documentary evidence, the technical line of reasoning underlying the Examiner's decision to take such notice must be clear and unmistakable. Applicants submit that it is not clear and unmistakable that one would be motivated to modify Archibald so as to prolong an audiovisual time of digital contents if an electronic advertisement is viewed and listened to at a terminal apparatus, in the manner claimed. (See *In re Zurko*, 258 F.3d 1379, 59 USPQ2d 1693 (Fed. Cir. 2001) (holding that general conclusions concerning what is "basic knowledge" or "common sense" to one of ordinary skill in the art without specific factual findings and some concrete evidence in the record to support these findings will not support an obviousness rejection)).

Therefore, Archibald fails to teach or suggest "a step of prolonging an audiovisual time of digital contents if an electronic advertisement is viewed and listened to at the terminal apparatus capable of viewing and listening to the digital contents" as recited in dependent claims 9-16.

Therefore, Archibald fails to teach or suggest the features of the present invention, as now more clearly recited in the claims. Accordingly, reconsideration and withdrawal of the 35 USC §103(a) rejection of claims 1-33, 36, and 37 is respectfully requested.

Both Archibald and Baranowski suffer from the same deficiencies relative to the features of the present invention. Therefore, combining the teachings

Baranowski with Archibald, in the manner suggested by the Examiner, does not render obvious the features of the present invention, as now more clearly recited in claims 1-33, 36 and 37. Accordingly, reconsideration and withdrawal of the 35 U.S.C. §103(a) as being unpatentable over Archibald in view of Baranowski are respectfully requested.

The remaining references of record have been studied. Applicants submit that they do not supply any of the deficiencies noted above with respect to the references used in the rejection of claims 1-33, 36 and 37.

New Claim 38

New claim 38 is dependent on claim 1. Therefore, Applicants submit that claim 38 is allowable for at least the same reasons as independent claim 1.

In view of the foregoing amendments and remarks, Applicants submit that claims 1-33 and 36-38 are in condition for allowance. Accordingly, early allowance of claims 1-33 and 36-38 is respectfully requested.

To the extent necessary, Applicants petition for an extension of time under 37 CFR 1.136. Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, or credit any overpayment of fees, to the

deposit account of Mattingly, Stanger, Malur & Brundidge, P.C., Deposit Account No. 50-1417 (referencing attorney docket no. 500.40470X00).

Respectfully submitted,

MATTINGLY, STANGER, MALUR & BRUNDIDGE, P.C.

Donna K. Mason
Registration No. 45,962

DKM/sdb
(703) 684-1120